



# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 06/08/04

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM WS2

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Review of the Brown Act and City of Hayward Charter Provisions

### **RECOMMENDATION:**

It is recommended that the City Council review and comment on this report.

### **INTRODUCTION:**

In keeping with the City's strong commitment to the principles of open government, as well as the Alameda County Grand Jury's recommendation for periodic Brown Act updates, this report is presented to apprise the City Council of current Brown Act issues. In addition, this report reviews selected provisions of the City's Charter.

### **Ralph M. Brown Act**

The Ralph M. Brown Act ("Brown Act") is California's "sunshine" law for local governments. Based upon state policy that the people must be informed so that they can maintain oversight of the government, it requires that all meetings of the legislative body of a local agency be open and public, and that all persons be permitted to attend any meeting of the legislative body of a local agency, unless an exception exists.

The main components of the Brown Act involve meetings of legislative bodies and agendas. There have been only two significant, substantive changes to the Brown Act since 2000: (1) The meetings of a legislative body must comply with the Americans with Disabilities Act and (2) closed session provisions regarding emergencies and disclosure of confidential information have been added, as discussed more fully below.

## **Brown Act Requirements**

**Meetings:** Under the Brown Act, a meeting is any congregation of a majority of the members of a legislative body at the same time and the same place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the local agency. The Brown Act does not limit individual contacts between a member of the legislative body and any other person, except in the context of "serial meetings" which are discussed below. The Brown Act also permits the majority to attend a social gathering, provided that agency business of a specific nature is not discussed. The Brown Act applies to a majority meeting with staff members for a collective briefing.

**Exemptions.** Since 1994, the Brown Act has allowed a majority of a legislative body to attend a meeting of another legislative body, provided there are no "sidebar" discussions about specific city business. Recent Brown Act amendments clarify this provision and provide that the majority can speak as part of the scheduled meeting, again provided there are no sidebar discussions about city business. An example of this would be a Council majority appearing to testify on an issue in a neighboring city. The Brown Act now also explicitly permits a majority to attend a standing committee meeting, but only as "observers," meaning that they cannot speak or otherwise participate in the meeting.

**Teleconferencing.** Recent amendments have made electronic, remote meetings a real possibility by now permitting "teleconferencing" as a method for conducting electronic meetings. Council members may be counted toward a quorum and participate fully in the meeting from remote locations. There are several technical requirements, including:

- Any remote location may be connected to the main meeting location by telephone, video or both.
- The notice and agenda of the meeting must identify any remote locations.
- Any remote locations must be posted and accessible to the public, including the disabled.
- All votes must be made by roll call.
- The meeting must in all respects comply with the Brown Act, including enabling participation by members of the public present in remote locations.
- At least a quorum of the legislative body shall participate from locations within the local agency's jurisdiction.

**Adding Items To An Agenda.** Assuming the Council finds an immediate need to take action on an item and the item came to the agency's attention after the agenda was posted, the Brown Act permits the addition of that item, with a vote by a supermajority of the total membership. In cases of emergency, only a majority vote is needed to add the item. The Brown Act defines

emergencies as work stoppages, crippling disasters, terrorist activity or threat thereof, or other activity that severely impairs public health or safety.

*Public Comment.* Under the Brown Act, the public has a right to address the City Council at any meeting on any topic that is within the Council's subject matter jurisdiction. However, a City Council meeting is considered a "limited public forum." As such, the Council has the authority to limit speech through the imposition of agendas and rules of order and decorum. The regulations on public comment must be reasonable. Any restrictions upon public comment at City Council meetings must not be too broad and must not constitute prior restraints. A legislative body may prohibit a member of the public from speaking on a matter which is not within the legislative body's subject matter jurisdiction. Some other forms of permissible regulation are as follows:

*Request to Speak Requirements:* The Council may require members of the public wishing to address the Council to fill out a speaker's card and submit it to the City Clerk.

*Time Limits:* The Council may regulate the total amount of time on particular issues and for each individual speaker, subject to the requirements of due process. Time limits of one to five minutes are not unusual for individual speakers.

*Repetitious or Irrelevant Comments:* The Council may regulate a speaker who is speaking too long by being unduly repetitious or by extended discussion of irrelevancies. Attacks against the character or motive of any person may be ruled out of order.

*Spokesperson for Groups :* The right to limit testimony on a given subject implies the right to request a spokesperson be chosen for a group and/or limit the number of such persons addressing the Council whenever a group of persons wishes to address the Council on the same subject matter.

*Enforcement:* The Council may rule speakers out-of-order for cause. A speaker may not be ruled out-of-order, however, due to the substance of the comments, unless they are irrelevant to the subject at hand, beyond the subject matter jurisdiction of the Council and/or unduly repetitious.

### Other Issues

*Discussing Items Not On The Agenda :* While the Brown Act generally prohibits acting on or discussing items not on the posted agenda, it allows the Council to do any of the following:

- Briefly respond to statements made or questions posed by persons exercising their public testimony rights.
- Ask a question for clarification.

- Make a brief announcement.
- Make a brief report on his or her own activities.
- Provide a reference to staff for factual information.
- Request staff to report back to the Council on any matter.
- Take action to direct staff to place a matter of business on a future agenda. The Council's policy regarding requests to place a contested or controversial item on the agenda is to schedule a procedural consideration of the request to determine if the Council as a whole desires to consider the substantive merits of the matter.

While neither the legislature nor the courts have provided guidance on what a "brief" statement, comment, announcement or report may be, discretion would seem to dictate that they be able to be completed within one minute.

*Discussion of Agenda Items:* Pursuant to the Brown Act, the public is afforded an opportunity to speak on virtually any item on the agenda *prior* to its being acted upon by the City Council. Hence, it is appropriate for members of the public to be afforded the opportunity to present evidence and testimony on an item prior to members of the Council discussing their concerns, opinions and positions.

*Technological Communications and Serial Meetings:* One of the most frequently asked questions about the Brown Act involves serial meetings. The serial meeting may be a "daisy-chain" style meeting in which one member contacts another member and that member contacts a third member who then contacts a fourth member, etc., until a quorum and collective concurrence has been reached. Another type of serial meeting is the hub-and-spoke meeting in which one member contacts all other members. It is also possible for staff or members of the public to become conduits, creating serial meetings. If the purpose of the communication (or series of communications) is to develop a consensus and a majority has participated, then the communication is a serial meeting in violation of the Brown Act.

E-mail has provided another avenue for potential Brown Act violations. If e-mail is used to build a consensus by a majority the legislative body, there is a Brown Act violation. The California Attorney General has opined that if a majority of a legislative body participates in an e-mail discussion to develop concurrence on an pending action, then the Brown Act has been violated, despite the fact that the e-mails are posted on the agency's website and a printed version of each e-mail is reported at the next public meeting. The passive receipt of mail or the solitary review of a memorandum by an individual council member, without more, would not violate the Brown Act.

*Closed Sessions:* The Brown Act requires that the City Council discuss its matters in public, unless specific authority exists in the Brown Act for a closed session. The Brown Act contains exceptions for labor negotiations, pending litigation, personnel matters, and real estate

negotiations, among others. The legal authority for a closed session must be included on the posted agenda.

The Brown Act was amended in 2002 to provide that the emergency exception for closed sessions now includes terrorism within the definition of an emergency. The legislature also added a section prohibiting the disclosure of confidential information obtained in closed session to a person not entitled to receive the information. "Confidential information" means a communication made in closed session that is specifically related to the basis for the Council to meet in closed session. Any member of a legislative body who wilfully discloses confidential information in violation of the Brown Act may be referred to the grand jury. It is not a violation of the Brown Act to make a confidential inquiry to a district attorney or grand jury concerning a perceived violation of law.

*Remedies for Brown Act Violations:* The District Attorney or any interested person can file a civil action to compel a local agency to comply with the Brown Act. Persons who wish to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions. An interested person who successfully invalidates a legislative body's action can recover attorney's fees and costs from the local agency (not the individual members). However, a violation of the Brown Act by a member of the legislative body who acts with improper intent is punishable as a misdemeanor. The member must intend to deprive the public of information to which the member knows or has reason to know the public is entitled in order to be found guilty of a misdemeanor.

### **City Charter Provisions**

At the request of Council Member Henson, a discussion of the City's Charter provisions relative to the assignment and delegation of duties of the City's elected and appointed officials follows. Copies of the relevant sections of the City Charter are included for your convenience.

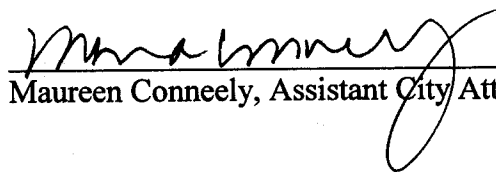
Article VI, Section 606 of the Charter vests the City Council with all powers of the City, except as limited by other provisions of the Charter. The Charter does not specifically enumerate the powers of the Council. Rather, the Charter defines the Council's authority by default: Those powers that are not granted to other City officials are reserved to the Council.

By contrast, the Charter expressly enumerates the powers and duties of the City Manager and the City Attorney. According to Article VII, Section 701, the City Manager is the head of the administrative branch of the City government and has the power to appoint, discipline and remove all officers and employees under his jurisdiction; prepare the budget; make and execute contracts; and enforce the laws of the State pertaining to the City, among other duties. The Non-Interference provision of the Charter (Article VII, Section 705) states that neither the Council nor any of its members shall interfere with the execution by the City Manager of his powers and duties, or order the appointment or removal of any person to any office of employment. Article VIII, Section 801 provides that the City Council shall appoint the City Manager, the City Clerk and the City Attorney. That section further provides that the Directors of Finance, Public Works and Planning, the City Engineer, the Chief of Police and

the Chief of the Fire Department, along with all other department heads, shall be appointed by the City Manager and shall serve at his pleasure.

Under Article VIII, Section 808, the City Attorney shall have the power and be required to represent and advise the Council and all City officers on matters pertaining to their offices. Other powers of the City Attorney include the power to prosecute criminal cases arising from violations of the Charter and the ordinances of the City, if the district attorney declines to do so; give written advice when requested by the Council, boards or commissions of the City; approve the form of all contracts; and represent the City, City officers and employees in all actions and proceedings in which the City is concerned or a party, provided that the action or proceeding involving an officer or employee arises out of his or her employment or official capacity.

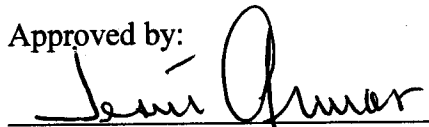
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Attachment: Selected Provisions of the City Charter

**SECTION 602. COUNCILMAN TO HOLD NO OTHER OFFICE.** No member of the Council shall hold any other city office or city employment, the compensation of which is paid out of municipal funds, nor be elected or appointed to any office created or the compensation of which is increased by the Council, while he is a member thereof, until one year after the expiration of the term for which he was elected.

**SECTION 603. COMPENSATION.** (Members of Council) Any compensation to be paid members of the Council shall be established by ordinance, and shall apply to all incumbent members of the Council. The Council may likewise change such compensation; however, such change shall not be effective until one or more members of Council becomes eligible for such change in compensation by virtue of beginning a new term of office.

In addition, each member of the Council shall receive reimbursement on order of the Council for Council authorized traveling and other expenses when on official duty.

(AMENDED: STATS. 1964 CH. 41)

**SECTION 604. MAYOR (Powers and Duties)** Until the General Municipal Election next following the effective date of this section, the Council's presiding officer shall be selected and hold office as provided theretofore. Thereafter, the elected Mayor shall be recognized as the official head of the City for all ceremonial purposes, and by the Courts for the purpose of serving civil processes. The Mayor shall be the presiding officer of the Council, shall preside at the meetings of the Council and shall sign the official documents of the Council. He shall be included as a member of the Council at all meetings of the Council for the purpose of determining the presence of a quorum. He shall be entitled to a vote on all matters coming before the Council, but shall possess no veto power. He may use the title of Mayor in all cases, but the same shall not be construed as conferring upon him administrative or judicial functions or other powers or functions of a Mayor under the general laws of the State.

(AMENDED: STATS. 1964 CH. 41)

**SECTION 605. MAYOR PRO TEMPORE.** Until the General Municipal Election next following the effective date of this section, the Council's Mayor Pro Tempore shall be selected and hold office as provided theretofore. Thereafter, the Council shall meet on the first

Tuesday following each General Municipal Election and shall elect one of its members as Mayor Pro Tempore. The Mayor Pro Tempore shall serve at the pleasure of the Council, and shall be elected and removed by the affirmative votes of at least five (5) members of Council.

The Mayor Pro Tempore shall perform the duties of the Mayor during his absence or disability. (AMENDED: STATS. 1964 CH. 41)

**SECTION 606. POWERS OF THE COUNCIL.** All powers of the City shall be vested in the Council, subject to the provisions of this Charter and to the Constitution of the State of California. The Council may establish the method by which any of such powers may be exercised.

**SECTION 607. MEETINGS OF COUNCIL.** The Council shall, by ordinance or resolution, provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All meetings of the Council, whether regular or special, shall be open to the public.

**SECTION 608. QUORUM.** A majority of the members of the Council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and postpone the consideration of pending business.

**SECTION 609. CITIZEN PARTICIPATION.** No citizen shall be denied the right personally, or through counsel, to present grievances or offer suggestions for the betterment of municipal affairs, at any regular meeting of the Council, nor to speak on the subject at any special meeting.

**SECTION 610. ADMINISTERING OATHS. SUBPOENAS.** Each member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of the State.

original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the City Clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of an ordinance in the usual way.

**SECTION 622. CODIFICATION OF ORDINANCES.** Any or all ordinances of the City which have been enacted in the manner required at the time of their adoption, and which have not been repealed, may be compiled, consolidated, revised, indexed and arranged as a comprehensive ordinance code, and such code may be adopted by reference, with the same effect as an ordinance, by the passage of an ordinance for such purpose. Such code need not be published in the manner required for other ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to the adoption thereof. Ordinances codified shall be repealed as of the effective date of the code. Subsequent amendments to the code shall be enacted in the same manner as herein required for the amendment of ordinances generally.

**SECTION 623. ORDINANCE VIOLATION. PENALTY.** A violation of any ordinance of the City shall constitute a misdemeanor unless by the terms of such ordinance its violation shall constitute an infraction. A violation of any ordinance of the City may be prosecuted in the name of the People of the State of California or may be redressed by civil action.

(AMENDED: STATS. 1962 CH. 38)

## **ARTICLE VII. CITY MANAGER.**

### **SECTION 700. CITY MANAGER.**

There shall be a City Manager who shall be the chief administrative officer of the City. He shall be appointed for an indefinite term by the Council and shall serve at the pleasure of the Council. He shall be chosen on the basis of his executive and administrative qualifications, with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth. He need not be a resident of the City or State at the time of his appointment, but during his tenure of office, he shall reside within the City, unless the

Council authorizes him to reside outside the City.

No Councilman shall be eligible for appointment to the office of City Manager during the term for which he shall have been elected or appointed nor within two years thereafter.

**SECTION 701. POWERS AND DUTIES.** The City Manager shall be head of the administrative branch of the City government. He shall be responsible to the Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have power and be required to:

1. Appoint, discipline and remove, subject to the personnel provisions of this Charter, except as otherwise provided by this Charter, all officers and employees of the City under this jurisdiction. He may authorize the head of any department or office to appoint, discipline or remove subordinates in such department or office.

2. Prepare the budget annually and submit it to the Council and be responsible for its administration after its adoption.

3. Prepare and submit to the Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.

4. Keep the Council advised of the financial condition and future needs of the City and make such recommendations on any matter as may to him seem desirable.

5. Establish a centralized purchasing system for all City office, departments and agencies.

6. Prepare rules and regulations governing the contracting for, purchasing, inspection, storing, inventory, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the Council for adoption by it.

7. Enforce the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.

8. To make and execute contracts on behalf of the City for commodities or services included in the annual budget, or otherwise

authorized by Council action.

9. Perform such other duties as may be prescribed by this Charter or required of him by the Council not inconsistent with the Charter.

**SECTION 702. PARTICIPATION IN COUNCIL ACTION.** The City Manager shall be accorded a seat at the Council table and at all meetings of boards and commissions and shall be entitled to participate in their deliberations, but shall not have a vote. He shall receive notice of all special meetings of the Council, boards and commissions.

**SECTION 703. RULES AND REGULATIONS.** The City Manager may prescribe such general rules and regulations as he may deem necessary or expedient for the general conduct of the administrative offices and department of the City under his jurisdiction.

**SECTION 704. MANAGER PRO TEMPORE.** The City Manager shall appoint, subject to the approval of the Council, a qualified administrative officer or employee to serve as Manager Pro Tempore during the absence or disability of the City Manager. If the Manager fails to make such designation, the Council may designate an officer of the City to serve as Manager Pro Tempore during the absence or disability of the City Manager.

**SECTION 705. NON-INTERFERENCE WITH ADMINISTRATIVE SERVICE.** Neither the Council nor any of its members shall interfere with the execution by the City Manager of his powers and duties, or order, directly or indirectly, the appointment by the City Manager, or by any of the department heads in the administrative service of the City, of any person to any office or employment, or his removal therefrom. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately. The City Manager shall take his orders and instructions from the City Council only when it is sitting in a lawfully held meeting.

## **ARTICLE VIII.**

### **OFFICERS AND EMPLOYEES.**

#### **SECTION 800. ENUMERATION.**

The officers of the City of Hayward shall consist

of the Council, a City Manager, a City Attorney, a City Clerk, a Director of Finance, a Director of Public Works, a City Engineer, a Planning Director, a Chief of Police, a Chief of the Fire Department and such other subordinate officers, assistants, deputies and employees as the Council may deem necessary to provide by ordinance or resolution.

**SECTION 801. APPOINTMENT AND REMOVAL.** The City Manager, City Attorney and City Clerk shall be appointed by and may be removed by the affirmative votes of no less than four members of the Council.

The Director of Finance, Director of Public Works, City Engineer, Planning Director, Chief of Police and Chief of the Fire Department and all other officers and department heads of the City shall be appointed by the City Manager and shall serve at the pleasure of the City Manager.

**SECTION 802. DUTIES OF OFFICERS AND EMPLOYEES.** The Council may provide by ordinance or resolution, not inconsistent with this Charter, for the powers and duties of all officers and employees of the City.

The Council may transfer or consolidate functions of the City Government to or with appropriate functions of the state or county government, or make use of such functions of the state or county government, and in such case, the provisions of this Charter providing for the function of the City government so transferred or consolidated, shall be deemed suspended during the continuance of such transfer or consolidation, to the extent that such suspension is made necessary or convenient and is set forth in the ordinance or resolution establishing such transfer or consolidation. Any such transfer or consolidation may be repealed in like manner.

**SECTION 803. COMPENSATION OF OFFICERS AND EMPLOYEES.** The compensation of all City officers and employees, except as otherwise provided in this Charter, shall be by salary to be fixed by ordinance or resolution. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation aside from the salary or compensation as fixed by the Council, but all fees received by him in connection with his official duties shall be paid by him into the City Treasury.

#### **SECTION 804. OATH OF OFFICE.**

Every officer of the City, before entering upon the duties of his office, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.

#### **SECTION 805. OFFICIAL BONDS.**

The Council shall fix by ordinance the amounts and terms of the official bonds of all officials or employees who are required by ordinance to give such bonds. All bonds shall be executed by responsible corporate surety, shall be approved as to form by the City Attorney and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

There shall be no personal liability upon, or any right to recover against, a superior officer, or his bond, for any wrongful act or omission of his subordinate, unless such superior officer was a party to, or conspired in such wrongful act or omission.

**SECTION 806. ILLEGAL CONTRACTS, FINANCIAL INTEREST PROHIBITED.** No officer or employee of the City shall become financially interested except by testate or intestate succession, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the City is a party; provided, however, any employees may negotiate by contract the same of any real property subject to eminent domain proceedings of the City. Any member of a board or commission serving without compensation may contract with the City or sell or contract to sell personal property to the City to be used by a department, board or commission of the City other than the board or commission which he serves.

No officer or employee of the City shall be deemed to be financially interested by the ownership of less than three percent of the outstanding capital stock of a corporation. Any contract, sale or transaction in which there shall be such an interest, as specified in this section, shall become void at the election of the City when so declared by resolution of the Council.

Any violation of the provisions hereof shall be deemed a misdemeanor and shall be cause for removal from office.

(AMENDED: STATE, 1964 CH 41)

**SECTION 807. NEPOTISM.** The Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the second

degree of any one or more of the members of such Council, and neither shall any department head or other officer having appointive power appoint any relative within such degree to any such position.

**SECTION 808. CITY ATTORNEY. POWERS AND DUTIES.** To be eligible for appointment as City Attorney, the person appointed shall be an attorney-at-law duly licensed as such under the laws of the State of California and shall have practiced law for at least five years prior to assuming the duties of City Attorney.

The City Attorney shall have power and be required to:

1. Represent and advise the Council and all City officers on all matters of law pertaining to their offices.
2. Represent and appear for the City in any and all actions and proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee or former City officer or employee in any and all actions and proceedings in which any such City officer or employee is concerned or is a party, for any action arising out of his employment or by reason of his official capacity.
3. Prosecute on behalf of the people criminal cases arising from violations of the provisions of this Charter and the ordinances of the City if the district attorney declines to do so and prosecute such cases arising from violations of state law when the district attorney consents thereto.
4. Attend all meetings of the Council and provide advice to the City Council when requested to do so.
5. Give advice or an opinion in writing whenever requested to do so in writing by the Council or any of the officers, boards or commissions of the City.
6. Approve the form of all contracts made by and all bonds given to the City, by endorsing an approval thereon in writing.
7. Prepare any and all proposed ordinances or resolutions for the City and amendments thereto.
8. Appoint, discipline and remove, subject to the personnel provisions of this Charter, all officers and employees of the City Attorney's office.

9. Perform such other duties consistent with this Charter as may be required by the Council.

10. Surrender all books, papers, files and documents pertaining to the City's affairs upon leaving office as City Attorney.

(AMENDED: STATS. 1992 CH. 30)

#### **SECTION 809. ARBITRATION FOR FIRE DEPARTMENT EMPLOYEES.**

(a) It is hereby declared to be the policy of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the Fire Department which are fair and competitive with comparable private and public employment. To such purpose, the City hereby recognizes the efficacy of and adopts the principles of binding arbitration as an equitable and necessary alternative means to arrive at a fair resolution of terms of wages, hours, and other terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.

(b) The City, through its duly authorized representatives, shall bargain in good faith with the recognized employee organization for the unit composed of all the uniformed employees of the Fire Department as to all matters relating to the wages, hours and terms and conditions of employment of such employees. Unless and until agreement is reached through the bargaining process, or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or employment condition applicable to the said uniformed forces shall be changed or eliminated.

(c) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the Fire Department may, as the result of an impasse in bargaining, refer any unresolved issues to binding arbitration under the provisions of this section.

(d) When an impasse has been reached, any unresolved dispute or controversy pertaining to wages, hours, or other terms and conditions of employment, or any unresolved dispute or controversy pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the Fire Department shall be submitted to an impartial arbitrator.

(e) An impasse may be declared by

either the City or the recognized employee organization in the event good faith bargaining or other mutually agreed upon settlement methods concerning the dispute or controversy fail to result in an agreement between the parties. Representatives designated by the City and representatives of the recognized employee organization shall select an arbitrator. In the event that said parties cannot agree upon the selection of an arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. Every effort shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.

(f) The arbitration proceedings herein provided shall be governed by Section 1280, et seq., of the California Code of Civil Procedure. The arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(g) In any arbitration under subsection (c) of this section, the arbitrator is directed to take into consideration the City's purpose and policy to create and maintain wages, hours, and other terms and conditions of employment which are fair and competitive with comparable private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider the interest and welfare of the public and the availability and sources of funds to defray the cost of any changes in wages, hours and conditions of employment. The arbitrator shall also consider such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the